

MEMORANDUM

TO: ORDINANCE COMMITTEE OF THE AREA PLAN COMMISSION
AND ADMINISTRATIVE OFFICERS
FROM: Krista Trout-Edwards, CFM
SUBJECT: Revised Flood Plain section of the Unified Zoning Ordinance
DATE: June 28, 2007

The Flood Plain section of the UZO is being revised to acknowledge the new stormwater ordinances, the Community Rating System Program (CRS) and to correct problems identified since its original adoption. This revision was included as a work item in the adopted *Multi-Hazard Mitigation Plan Tippecanoe County, Indiana* and is necessary for enrollment in the CRS program. CRS awards points to communities for their floodplain management program, which translate into a reduction in the premium paid by area residents with flood insurance policies.

A summary of the revision is as follows:

Definitions – After each definition, the source and the reason for it are included. Many are incorporated to acknowledge other ordinances or the CRS program and for clarification of past situations.

2-26-1 – INTENT:

Revised with new definitions

2-26-2 – BOUNDARIES:

- 2-26-2(a) Clarification that the zoning maps do not show FP zoning in all places because of a lack of information;
- 2-26-2(b) Revised to recognize that the FP zone in small drainage basins is identified by the presence of alluvial soils (as per 2-26-17(d)), this reflects the current procedure; and
- 2-26-2(c) Revised to recognize that in some instances the FP zone must be established rather than changed.

2-26-3 – USES AND STRUCTURES PERMITTED WITHIN A FLOODWAY FRINGE:

Clarified local permit needed and anchoring specifications which are a minimum requirement of the National Flood Insurance Program (NFIP), and as follows:

- 2-26-3(b)(1) and (6) Combined;
- 2-26-3(b)(2) Fences were moved because they need IDNR approval in the floodway and this made it easier to handle;
- 2-26-3(b)(3) and (4) Clarifications only;
- 2-26-3(c) Decks on slopes was added, the 15% percent is based on research and input from other offices;
- 2-26-3(d) Removed because it is listed in the Use Table (3-2) and is covered by that section;

- 2-26-3(f) Clarification to recognize stormwater ordinances;
- 2-26-3(g) Changed “directional” to “incidental” because that is the ordinance term and added in the words “public park” to prevent misinterpretation; and
- 2-26-3(h) Clarification only.

2-26-4 – *USES AND STRUCTURES PERMITTED WITHIN A REGULATORY FLOODWAY:*

Clarified local permit needed and the NFIP required anchoring specifications. The requirement for IDNR’s approval was moved to the top of the section to make it more noticeable. The rest of the changes are as follows:

- 2-26-2(a) Removed because not all of the uses are permitted in the floodway and it was rewritten to acknowledge UZO 3-2;
- 2-26-4(c) and (d) Same uses permitted in 2-26-3; and
- 2-26-4(e) Fences with IDNR’s approval, specifically stated.

2-26-5 – *USES AND STRUCTURES PROHIBITED WITHIN EITHER A FLOODWAY FRINGE OR REGULATORY FLOODWAY:*

Clarifications only.

2-26-6 - 16 – “The Table”

No changes

2-26-17 – ESTABLISHING AND CHANGING FP BOUNDARIES:

Renamed to recognize that sometimes the FP zone must be established rather than changed, other changes are as follows:

- 2-26-17(a) Clarification that staff also uses IDNR letters to determine flood elevations;
- 2-26-17(b) Clarification;
- 2-26-17(c) (Formerly e) Updated to reflect the way that this section is used because scale of the Soil Survey is too large to determine where alluvial soils are, this reflects the current procedure;
- 2-26-17(d) (Formerly c) Clarification mostly, but changed to specifically mention that each certification needs a flood elevation letter and a certification statement, this reflects current procedure (see Appendix H on page 19 of revision);
- 2-26-17 (f) became (e) and (g) became (f) – no changes.

2-26-18 – ADDITIONAL RESTRICTIONS:

Initial statement rewritten to recognize that sometimes the FP zone needs to be established rather than changed, other changes are as follows:

- 2-26-18(a) Bolded lowest floor elevation per new definition and added FEMA elevation certificate (EC) requirement to demonstrate compliance;
- 2-26-18(c) Revised per clearcutting definition and expanded to apply to the entire FP zone;

- 2-26-18(d) Added to preserve trees along the riparian corridor, input from a professional certified arborist, cannot prohibit SIC 0811 because of state laws;
- 2-26-18(e) (formerly d) Revised to recognize new stormwater ordinances;
- 2-26-18(f) (formerly e) Revised per suitable fill definition; and
- 2-26-18(g) Added to clarify that adding and compacting suitable fill dirt must be done before on-site digging occurs.

3-2 – PERMITTED USE TABLE

- SIC 0831 Allowed in the FP zone except for the distilling processes, added footnote 63;
- “Recycling Collection Facilities” disallowed in the FP zone; and
- SIC 4953 “Construction/Demolition disposal sites” disallowed in the FP zone based on the suitable fill definition.

Chapter 5 – SUPPLEMENTARY REGULATIONS

Simply changed market value to bold and italics so that it reflects in the new definition in the following sections:

- 5-1-2(d)
- 5-1-3(c)(1)
- 5-1-6(d)(1)
- 5-1-7(c)(1)
- 5-1-8(d)(1)
- 5-1-9(2)(i)
- Also updated **5-7** by striking out RLS, which was covered by Amendment 41

6-2-1 – IMPROVEMENT LOCATION PERMITS:

Clarifications

- 6-2-1(a)(7) Specifically stated that this does not apply to land in the FP zone;
- 6-2-1(a)(8) New, requires permits in the FP zone for all uses other than Agricultural ones, which are excepted out by state laws; and
- 6-2-1(b) Clarification that IDNR's approval is required if the fence is in the floodway.

6-2-3 – CERTIFICATES OF COMPLIANCE:

Had a note to add “elevation certificate” to the requirements listed in (a)(1) and (2), but I think it is covered by (1).

- 6-2-1(d)(3) Revised as per 2-26-18(d), which requires plans for SIC 0811 in the FP zone.

6-2-5 – SITE PLAN REQUIREMENTS:

Clarifications –

- 6-2-5(a)(16)(A) Changes in line with what was made in 2-26-17 above;

- 6-2-5(a)(16)(B) Changed lowest floor elevation to reflect definition and to clarify that site plan should show area where structures must comply;
- 6-2-5(a)(16)(C) Changed lowest floor elevation to reflect definition;
- 6-2-5(a)(16)(D) Added so that the 25' no building setback from the FP zone boundary is required for site plans.

CLEARCUTTING. The indiscriminate and broad removal of trees, shrubs or undergrowth with the intention of preparing real property for non-agricultural development purposes. This definition shall not include the selective removal of non-native tree and shrub species or hazardous trees when the soil is left relatively undisturbed; removal of dead trees; or normal mowing operations. *(I think we should consider this while working on a riparian buffer ordinance since our current statement regarding clearcutting in 2-26-18 is hard to enforce.)*

COMMUNITY RATING SYSTEM (CRS). The CRS was established by the Federal Emergency Management Agency (FEMA) to promote floodplain management above and beyond the minimum requirements of the National Flood Insurance Program (NFIP). As incentives, communities are awarded credits or points for implementation of new, CRS approved flood protection activities and educational outreach programs which help residents prevent or reduce flood losses. The higher the total number of points received by a community, the lower its CRS rating which results in a reduction of insurance premiums for insured residents. *(Standard, included because enrollment imminent)*

COMPENSATORY STORAGE. An excavated volume of storage within a floodplain used to balance the loss of natural flood storage capacity when **suitable fill** or **structures** are placed in the floodplain. Such excavated volume has to be available to inundation by and accessible to flood waters. *(Revised from Maumee River Basin Commission (MRBC) and included to acknowledge local plans)*

ELEVATION CERTIFICATE. A form published by FEMA that is used to certify the **regulatory flood** elevation and the **lowest floor elevation** of useable space to which the building has been constructed. *(Standard, but found in MRBC and needs to be recognized because of CRS.)*

FILL IMPROVEMENT LOCATION PERMIT. An improvement location permit issued by an Administrative Officer:

- (1) to add **suitable fill** to land in the FP **zone** or determined to be below the regulatory flood elevation; and
- (2) when more than ____ cubic yards of **suitable fill** are placed in any other zone.

As per 6-2-1-a-8 below. *(Local definition intended to recognize the new permit application.)*

IMPROVMENT LOCATION PERMIT. Written permission issued by the appropriate Administrative Officer to construct, repair, alter, move or add to a structure, or change the condition of land, with the exception of adding **suitable fill**, as per 6-2-1-a-7 below. *(Revised from UZO and it was needed based on new fill permit.)*

LOWEST FLOOR ELEVATION. Lowest level of a building, including basement and crawl space. *(Standard, but local definition and it is necessary per the Code of Federal Regulations 60.3)*

MARKET VALUE. The value of a building, structure, use, or mobile home, excluding land value that is determined by a certified general appraiser, certified residential appraiser or a licensed residential appraiser. *(Revised with local input, but based on an ordinance in Charlotte, North Carolina and necessary for clarification.)*

REPETITIVE LOSS. Flood related damages sustained by a structure on at least two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds twenty-five (25%) of the **market value** of the structure immediately before the damage occurred. *(Standard, but also ensure eligibility for Increased Cost of Compliance money that is built into all flood insurance policies to help homeowners comply with local regulations.)*

WATERCOURSE. Any river, stream, creek, brook, branch, natural or manmade drainageway in or into which stormwater runoff or floodwaters flow either continuously or intermittently. *(Tippecanoe County Stormwater Ordinance and used for clarification purposes and to link the ordinances.)*

SUBSTANTIALLY DAMAGED. A ***non-conforming building, structure, use*** or ***mobile home*** in the Flood Plain (FP) zone shall be considered to be **SUBSTANTIALLY DAMAGED** when damage of any origin is sustained by the building, structure, use or mobile home, whereby the cost of restoring it to its pre-damaged condition would equal or exceed 50% of the ~~market value~~ ***market value*** of the building, structure, use or mobile home before the damage occurred. *(Revised from UZO based on new market value definition.)*

SUBSTANTIAL IMPROVEMENT. For structures in the FP ***zone*** or determined to be on land below the regulatory flood elevation, any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the ***market value*** of the ***structure*** before the start of construction of the improvement. This term includes structures that have incurred ***repetitive loss*** or have been ***substantially damaged***, regardless of the actual repair work performed. *(Necessary for Increased Cost of Compliance)*

SUITABLE FILL. Fill material which is organic, stable, compacted, well graded, pervious, generally unaffected by water and frost and is appropriate for the purpose of supporting the intended use. Unsecured organic material such as tree trunks or wood chips shall not be used. Furthermore, material shall be devoid of contaminants, solid waste, trash, tires, concrete, asphalt, automobile (parts or bodies) and other similar material. *(Revised with local input, but based on an ordinance in Gallatin Co., Montana and needed to address past problems.)*

WATERSHED. The region drained by or contributing water to a specific point that could be along a watercourse, lake or stormwater facility. *(Revised from the TC Stormwater Ordinance definition, used for clarification purposes and to link the ordinances.)*

2-26-1 INTENT:

To protect lowland areas adjacent to lakes and ponds and areas that are within the **flood plain** of rivers and creeks **watercourses** and **watersheds** all of which are subject to inundation and damage from flood waters up to the elevation of the **regulatory flood**.

2-26-2 BOUNDARIES:

- (a) **Flood Plains** zoning exist adjacent to all natural and manmade **watercourses**, regardless of contributing drainage area or whether they have been defined or mapped. All land in a **flood plain** below the **regulatory flood** elevation (Amend 5) shall be contained in an FP **zone**. Boundaries of FP **zones** are as shown on the official zoning maps, and are as approved by the Indiana Department of Natural Resource's (IDNR) Division of Water and reflect the best available information. The FP **zone** is not shown on the zoning maps in all instances because of a lack of information and detailed studies. In these instances, the extent of the FP **zone** shall be established on an individual basis for land development (e.g. for rezoning cases, land division proposals and stormwater, drainage and **improvement location permits**) by using a **regulatory flood** elevation authorized by either the Indiana Department of Natural Resources' (IDNR's) Division of Water or the **Executive Director** per UZO 2-26-17.
- (b) For land along streams **watercourses** with an upstream drainage basin of less than one square mile (small drainage basins), the **flood plain** boundary shall be as shown on the official zoning map determined by the presence of alluvial soils on site as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor (RLS). IDNR's Division of Water shall determine in writing that a stream's **watercourse's** drainage basin is less than one square mile in area.
- (c) ~~Changing~~ Establishing or changing in these boundaries shall be made only through the procedures detailed in 2-26-17 below.

2-26-3 USES AND STRUCTURES PERMITTED WITHIN A FLOODWAY FRINGE:

The following **uses** and **structures** are permitted, provided that all local, federal and state permits have been obtained; all new improvements shall be anchored to prevent flotation, collapse or lateral movement of the **structure**. Anchoring shall be certified by a Professional Engineer prior to the issuance of a **Certificate of Compliance**.

- (a) **Primary uses:** see 3-2;
- (b) **structures** accessory to permitted **primary uses**, provided they do not obstruct circulation of water, threaten water quality, create erosion hazards or disrupt significant wildlife habitat, including:
 - (1) detached, unenclosed carports (no walls permitted) and the driveways serving them and unenclosed shelters (no walls permitted);
 - (2) ~~fences;~~
 - (3)(2) mailboxes;
 - (4)(3) **parking space** and **parking area** and the driveways serving them;
 - (5)(4) recreational apparatus equipment;
 - (6) ~~unenclosed shelters (no walls permitted);~~ and
 - (7)(5) water wells and fountains;

- (c) Except as provided in (g) below, free-standing decks on slopes no greater than 15%;
- (d) Fences;
- ~~(e)~~(e) **streets** and bridges;
- ~~(d)~~ **campsites** at **RV parks and campgrounds**;
- ~~(e)~~(f) peninsulas created of fill material **as long as compensatory storage** requirements are met;
- ~~(f)~~(g) walkways; benches; informational displays; **directional incidental signs**; foot bridges; observation decks; duck blinds; wildlife management shelters and other water-related structures that are constructed on pilings to permit the unobstructed flow of water and preserve the natural contours of the **flood plain on public park land**; and
- ~~(g)~~(h) enhancement of wetlands to improve wildlife habitat in accordance with a plan approved by the Indiana Department of Natural Resources (IDNR), the Indiana Department of Environmental Management (IDEM) and the Army Corp. of Engineers.

2-26-4 USES AND STRUCTURES PERMITTED WITHIN A REGULATORY FLOODWAY:

Approval in writing from IDNR's Division of Water is required for any work in the **regulatory floodway** portion of the **flood plain** as is a local **improvement location permit**. A local **improvement location permit** will not be issued until IDNR's Division of Water approval has been received; state approval does not guarantee the issuance of a local **improvement location permit**. All new improvements shall be anchored to prevent flotation, collapse or lateral movement of the **structure**. Anchoring shall be certified by a Professional Engineer prior to the issuance of a **Certificate of Compliance**.

- ~~(a)~~ Same as in 2-26-3 above; and
- (a) **Primary uses:** see 3-2;
- (b) boat anchorages, moorings and piers;
- (c) Same uses as in 2-26-3(b) above;
- (d) Same uses as in 2-26-3(e) through (h) above; and
- (e) fences per IDNR's Division of Water's requirements.

~~However, when IDNR also requires one of these uses or structures to have a permit to construct in a floodway, that use or structure shall not be permitted until IDNR issues that permit.~~

2-26-5 USES AND STRUCTURES PROHIBITED WITHIN EITHER A FLOODWAY FRINGE OR REGULATORY FLOODWAY:

The following **uses** and **structures** are prohibited, even if federal and state approvals and/or permits have been obtained:

- (a) additions to existing **structures** that lie wholly or partially in the FP **zone** see UZO 4-4-3(b); and
- (b) **uses** not listed in 2-26-3, 2-26-4 or expressly permitted in 3-2 3-2 below.

2-26-6	MINIMUM LOT AREA:	none
2-26-7	MINIMUM LOT WIDTH:	none
2-26-8	LOT COVERAGE:	Maximum coverage by all structures - 5% Minimum vegetative cover - 90%

2-26-9	MINIMUM FRONT, REAR OR SIDE SETBACK ALONG STREET FRONTAGE: (Amend 8)	Along a <i>local street or place</i> - 25' Along a <i>collector street</i> - 30' Along a <i>secondary arterial</i> - 40' Along a <i>primary arterial</i> - 60' See 4-4 for exceptions
2-26-10	MINIMUM REAR SETBACK NOT ALONG STREET FRONTAGE:	<i>Primary use structure</i> - 25' <i>Accessory structure</i> - 10' See 4-4 for additional information
2-26-11	MINIMUM SIDE SETBACK NOT ALONG STREET FRONTAGE:	6' See 4-4 for additional information
2-26-12	MINIMUM FRONT, REAR OR SIDE SETBACK ALONG STREET FRONTAGE:	Along a <i>local street or place</i> - 25' Along a <i>collector street</i> - 30' Along a <i>secondary arterial</i> - 40' Along a <i>primary arterial</i> - 60' See 4-4 for exceptions
2-26-13	MAXIMUM STRUCTURE HEIGHT:	35' See 4-5 for exceptions
2-26-14	MINIMUM OFF-STREET PARKING REQUIREMENTS:	See 3-2 and 4-6-3
2-26-15	ON PREMISE SIGNS:	See 4-8
2-26-16	BUFFERING REQUIREMENTS:	See 4-9

2-26-17 **ESTABLISHING AND CHANGING FP BOUNDARIES:**

- (a) Where a current ***Flood Insurance Rate Map (FIRM)*** includes the base flood elevation at the property in question or when there is existing written documentation from IDNR's Division of Water (IDNR), a petitioner seeking to ~~amend~~ establish or change the boundaries of the FP-zoned land described in 2-26-2-a above, shall provide the ***Executive Director*** with a scaled map of the property and a metes and bounds legal description. The base flood elevation on the ***FIRM*** map is equivalent to the ***regulatory flood*** elevation. The ***Executive Director*** shall then determine the ***regulatory flood*** elevation from the current ***FIRM*** map or best available written documentation from IDNR.
- (b) If advised by the ***Executive Director*** that there is no current ***FIRM*** map or other written documentation that includes the base flood elevation at the property in question, a petitioner seeking to ~~amend~~ establish or change the boundaries of the FP-zoned land, shall provide IDNR ~~with a scaled map and metes and bounds legal description~~ with the necessary information per IDNR's requirements. IDNR shall then determine the ***regulatory flood*** elevation and ***floodway*** location for the property on the official zoning maps.
- (c) When seeking to ~~amend~~ establish or change the boundaries of FP-zoned land described in 2-26-2-b above, the ***regulatory flood*** boundary in these small drainage basins may be adjusted by the ***Executive Director***, upon written request, to the limits of the alluvial soils ~~shown on the U.S. Department of Agriculture's Soil Conservation Service soil maps for~~

~~Tippecanoe County as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor (RLS). The alluvial soils mapped and certified area shall be considered as being the **regulatory floodway**.~~

~~(e)(d)~~The **Executive Director** may establish or change the boundary of the FP **zone** upon a petitioner providing:

- (1) a written request that the FP boundary be changed; and
- (2) a letter from either IDNR's Division of Water or the **Executive Director** or their designee containing a **regulatory flood** elevation; and
- (3) a metes and bounds legal description of that portion of the property situated at, ~~or~~ above or below the **regulatory flood elevation** determined by 2-26-17-a or 2-26-17-b above, certified by a Registered Land Surveyor (certification statement required per Appendix H). (Amend

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~~(d) When seeking to amend the boundaries of FP-zoned land described in 2-26-2-b above, the **regulatory flood** boundary in these small drainage basins may be adjusted by the **Executive Director**, upon written request, to the limits of the alluvial soils shown on the U.S. Department of Agriculture's Soil Conservation Service soil maps for Tippecanoe County. The alluvial soils shall be considered as being the **regulatory floodway**. THIS WAS MOVED TO (C)~~

~~(f)(e)~~An area of land removed from an FP **zone** through the process outlined in 2-26-17-c or 2-26-17-d above, shall take on the zoning of adjacent areas on the zoning map. Where adjacent areas are characterized by more than one **zone**, the line dividing those **zones** shall be extended through the land being removed from the FP **zone**. These are exceptions:

- (1) An area in the **floodway** that is filled to an elevation at or above the **regulatory flood** will still be considered part of the **floodway**, and shall retain its FP zoning.
- (2) If an island of land is certified as having natural ground elevation at or above that of the **regulatory flood** and is in the **floodway fringe** and adjacent to no **zone** other than an FP **zone**, it shall be zoned AW.
- (3) An area removed from an FP **zone** that is situated next to land previously removed from an FP **zone** shall derive its zoning from that previously removed land only if no other adjacent land is present.
- (4) A PD **zone** shall not be considered an adjacent **zone** for purposes of assigning a new classification to an area removed from an FP **zone**. Land removed from an FP **zone**, situated next to no **zone** other than PD and FP, shall be zoned AW.

~~(g)(f)~~Reclassification of land to some **zone** other than FP in and of itself provides no guarantee that an **improvement location permit** can be issued for any specific proposed **use**.

2-26-18 ADDITIONAL RESTRICTIONS:

To prevent harm to lands within or determined to be within the an FP **zone**:

- (a) The **lowest floor elevation**, including basements and crawl spaces, of **buildings** permitted in adjoining **zones** on land within 100' of an FP **zone** shall comply with the **flood protection grade**; compliance shall be demonstrated on FEMA's **elevation certificate**;
- (b) Water wells, water lines and sewage facilities located within a **flood plain** shall be constructed to eliminate contamination of or by floodwater;

- (c) Clearcutting **Clearcutting** of trees in the **floodway** FP **zone** shall be prohibited.
- (d) Removing trees in the FP **zone** shall be limited to the following situations to reduce the velocity of flood waters, prevent erosion, enhance aquatic habitat and capture pollutants:
 - (1) Trees found to be dead or hazardous by a certified arborist; the IDNR District Forester; or an employee of the SWCD; the USDA; or the NRCS.
 - (2) As necessary for construction; repair or maintenance of public roads; or utilities or drainage structures.
 - (3) As part of an approved forestry operation meeting the standards of SIC 0811 that has approved tree protection, management and regeneration plans prepared by an certified arborist; or an employee of the SWCD; the USDA; the NRCS; or the IDNR District Forester. Tree stumps from the removed trees shall be left on site in accordance with approved plans to reduce erosion.
- ~~(d)~~(e) Peninsulas created of **suitable fill** fill material shall be permitted within a **floodway fringe**, and may be permitted within a **regulatory floodway** as per 2-26-4 above. However, islands created of fill material shall not be permitted. The addition of **suitable fill** is subject to the following: No encroachment or fill within the **floodway fringe** or the **regulatory floodway** may increase the base flood elevation for that reach of the stream more than one-tenth of one foot. Indiana Department of Natural Resources, Division of Water, verification of that fact shall be required in writing for **floodways**, or by certification of a Registered Land Surveyor or Professional Engineer if in the **floodway fringe**
 - (1) For sites larger than 1 acre along **watercourses** with a drainage area equal to or greater than one square mile, no encroachment or addition of **suitable fill** within the **floodway fringe** or the **regulatory floodway** shall result in a loss of **flood plain** storage. Before receiving a **fill improvement location permit**, written documentation that the project complies with the adopted stormwater ordinances must be provided to the Administrative Officer; or
 - (2) For sites less than 1 acre along **watercourses** or larger sites with a drainage area less than one square mile, no encroachment or addition of **suitable fill** within the **floodway fringe** or the **regulatory floodway** may increase the base flood elevation for that reach of stream more than one tenth of one foot. Before receiving a **fill improvement location permit**, documentation showing compliance shall be required in writing from INDR's Division of Water for **floodways** or by certification from a Professional Engineer for the **floodway fringe** and for small drainage basins.
- ~~(e)~~(f) Additionally, if a **residential** or nonresidential **building** is to be constructed on permanent land fill **suitable fill** that raises the elevation of land out of the **floodway fringe**, the fill shall be placed in layers no greater than 1' deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method. This procedure shall be certified by a Professional Engineer (Amend 41).
- ~~(f)~~(g) The addition and compaction of **suitable fill** shall precede the commencement of all on-site digging.

Section 1. Change UZO Section **3-2, PERMITTED USE TABLE** as described below:

SIC 08 – Forestry, include the following:

083 Forest Nurseries and Gathering of Forest Products⁶³ Allowed in all zones that SIC 08 is currently allowed in, except for distilling processes, which will not be allowed in the FP zone.

Footnote 63 – Distilling processes are not allowed in the FP **zone**.

“Recycling Collection Facilities” disallow in the FP zone.

SIC 4953 “Construction/Demolition disposal sites” disallow in the FP zone.

5 SUPPLEMENTARY REGULATIONS

5-1 **NONCONFORMING USES, MOBILE HOMES, MOBILE HOME PARKS/MANUFACTURED HOUSING COMMUNITIES, LOTS, STRUCTURES AND SIGNAGE, AND NONCOMPLYING USES**

5-1-1 INTENT:

- (a) **Nonconforming uses, mobile homes, mobile home parks, lots and structures** and **noncomplying uses** were lawful **uses, mobile homes, lots and structures** before this ordinance became effective or was amended, but now they either:
 - (1) are prohibited in the **zone** in which they are located; or
 - (2) fail to meet current regulations or restrictions under this ordinance or its amendments;
 - (3) or both.
- (b) **Nonconforming signage** is a **sign** or a package of **signs** on a **sign-lot** that does not meet the requirements of 4-8-4 through 4-8-8 above, and which was otherwise lawfully installed on a given site at the time the applicable portions of 4-8-4 through 4-8-8 became effective.
- (c) It is the intent of this section:
 - (1) to permit **nonconforming uses, mobile homes** and **signs** to continue until they are removed or cease operation, but not to permit their expansion; and
 - (2) to permit **nonconforming lots and structures** and **noncomplying uses** to continue until they are removed, and to permit their expansion but only if that expansion is conforming and complying.
- (d) Note that illegal **uses, mobile homes, structures, lots** and **signs** existing at the time this ordinance was enacted or amended are not made legal by its enactment or amendment, unless made conforming or complying by the enactment or amendment.

5-1-2 **NONCONFORMING USES:**

- (a) A **nonconforming use** is a **primary use** of a **structure** or **lot** which is not permitted in 3-2 above to be operated in the **zone** in which it is located, and which otherwise lawfully existed at the time the applicable portion of 3-2 became effective.
- (b) A **nonconforming mobile home** is a specific type of **nonconforming use** addressed in 5-1-3 below.

- (c) Except for 5-1-4 below, an otherwise lawful **primary use** made a **nonconforming use** by this ordinance or an amendment to it, may be continued so long as it remains otherwise lawful, if:
 - (1) the land area of the **use** and/or the cubic content of its structure are not increased beyond what they were at the time this ordinance or its amendment became effective;
 - (2) it is moved neither in whole nor in part to any portion of its **lot** other than that which it occupied at the time this ordinance or its amendment became effective;
 - (3) no additional **structure** serving the **nonconforming use** is erected, other than is permitted in 5-1-5-b below;
 - (4) no additional or larger **signs** are erected which are intended to be seen from off the premises; and
 - (5) the **nonconforming use** is not **abandoned** for more than 1 year, except when government action impedes access to the premises. If a **nonconforming use** has been **abandoned** for more than 1 year, any subsequent **use** of that land shall conform to the requirements of this ordinance.
- (d) When a **nonconforming use** is damaged by any means to the extent that repairs would cost more than 50% of the replacement cost of that **use**, the **nonconforming use** shall no longer be permitted.
 - (1) When a **nonconforming use** in the FP **zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the ~~market value~~ **market value** of that **use**, the **substantially damaged nonconforming use** shall no longer be permitted in the FP **zone**.
- (e) A **nonconforming use** changed to a conforming **use**, shall never be changed back to a **nonconforming use**.
- (f) A **nonconforming use** may be replaced by another **nonconforming use** if the property owner demonstrates to the satisfaction of the **Administrative Officer** that the impact on surrounding **uses** of the replacement will be less than that of its predecessor. The **Administrative Officer** shall measure impact in terms of traffic generation, hours of operation, noise production and outdoor lighting.

5-1-3 NONCONFORMING MOBILE HOMES:

Mobile homes are designed to be movable rather than fixed **structures**. Because of that distinction, when a **mobile home** is a **nonconforming use**, the requirements of this section apply, rather than those of 5-1-2 above

- (a) A **nonconforming mobile home** is one which is not permitted in 3-2 above to be located in the **zone** in which it is in fact located, and which otherwise lawfully existed at the time the applicable portion of 3-2 became effective.
- (b) An otherwise lawful **mobile home** made a **nonconforming mobile home** by this ordinance or an amendment to it, may be continued so long as it remains otherwise lawful, if:

- (1) the land area of the **use** and/or the dimensions of the **mobile home** are not increased beyond what they were at the time this ordinance or its amendment became effective;
 - (2) it is not moved to any portion of its **lot** other than that which it occupied at the time this ordinance or its amendment became effective;
 - (3) no additional **structure** serving the **nonconforming mobile home** is erected;
 - (4) the **nonconforming mobile home** is not **abandoned** for more than 1 year, except when government action impedes access to the premises. If a **nonconforming mobile home** has been **abandoned** for more than 1 year, any subsequent **use** of that land shall conform to the requirements of this ordinance. Termination of electrical service for more than 1 year shall be construed as evidence of intent to **abandon**.
- (c) When a **nonconforming mobile home** is damaged by any means to the extent that repairs would cost more than 50% of the replacement cost of that **mobile home**, the **nonconforming mobile home** shall no longer be permitted.
- (1) When a **nonconforming mobile home** in the FP **zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the ~~market value~~ **market value** of that **mobile home**, the **substantially damaged nonconforming mobile home use** shall no longer be permitted in the FP **zone**.
- (d) A **nonconforming mobile home** changed to a conforming **use**, shall never be changed back to a **nonconforming mobile home**.
- (e) A **nonconforming mobile home** that has been **abandoned**, shall never be reoccupied, returned to its location or replaced by another **nonconforming mobile home**. However, in an FP **zone**, a **nonconforming mobile home** that has been **abandoned**, shall never be reoccupied, returned to its location or replaced by another **nonconforming mobile home**, regardless of time frame.
- (f) A **nonconforming mobile home** shall not be replaced by any other kind of **nonconforming use**.

5-1-6 NONCONFORMING STRUCTURES:

- (a) A **nonconforming structure** is a **structure** (including a **building**) which entirely or in part does not meet the minimum requirements in 4-2, 4-4 and 4-5 above for **front, rear or side setbacks, lot coverage** or maximum permitted **building height**, and which otherwise lawfully existed at the time those requirements became effective. However, any conforming **structure** made a **nonconforming structure** by a government taking or by grant of **right-of-way**, shall be considered conforming within the context of this ordinance (Amend 7).
- (b) A **nonconforming structure** occupied by a **nonconforming use** shall not be moved on its **lot** or **altered**, except in a way that decreases the **structure's** nonconformity. **Altered** shall not be construed to mean **enlarged**.

- (c) A **nonconforming structure** occupied by a permitted **use** may be moved on its **lot**, **altered** or **enlarged** in any way, provided the alteration or enlargement either meets all requirements of this ordinance, or decreases the **structure's** nonconformity.
- (d) When a **nonconforming structure** is damaged by any means to the extent that repairs would cost more than 50% of the replacement cost of that **structure**, it shall only be reconstructed in conformance with the requirements of this ordinance. If it had been occupied by a **nonconforming use**, that **use** will no longer be permitted.
 - (1) When a **nonconforming structure** in the FP **zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the ~~market value~~ **market value** of that **structure**, the **substantially damaged nonconforming structure** shall no longer be permitted in the FP **zone**.
- (b) A **nonconforming structure** changed to a conforming **structure** shall never be changed back to a **nonconforming structure**.

5-1-7 NONCONFORMING SIGNAGE:

- (a) **Nonconforming signage** is a **sign** or a package of **signs** on a **sign-lot** that does not meet the requirements of 4-8-4 through 4-8-8 above, and which was otherwise lawfully installed on a given site at the time the applicable portions of 4-8-4 through 4-8-8 became effective.
- (b) Otherwise lawful **signage** made **nonconforming** by this ordinance or an amendment to it, may be continued so long as it remains otherwise lawful, if:
 - (1) the **signage's** area is not increased beyond what it was at the time this ordinance or its amendment became effective;
 - (2) the **signage** is moved neither in whole nor in part to any portion of its **sign-lot** other than that which it occupied at the time this ordinance or its amendment became effective, or to a location that lessens the nonconformity (Amend 15); and
 - (3) the **primary use** of its **sign-lot** is not **abandoned** for more than 1 year, except when government action impedes access to the premises. If the **primary use** has been **abandoned** for more than 1 year, any subsequent signage on that **sign-lot** shall conform to the requirements of this ordinance.
- (c) When **nonconforming signage** is damaged by any means to the extent that repairs would cost more than 50% of the replacement cost of that **signage**, the **nonconforming signage** will no longer be permitted.
 - (1) When **nonconforming signage** in the FP **zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the ~~market value~~ **market value** of that **signage**, the **substantially damaged nonconforming signage** shall no longer be permitted in the FP **zone**.
- (d) If the distance from the edge of the **right-of-way** of on-premise **nonconforming signage** is further reduced by government acquisition of additional **right-of-way**, then it shall be moved to a distance from the new

right-of-way line no less than the distance from the previous **right-of-way line**. If the distance from the edge of the **right-of-way** of conforming on-premise **signage** is reduced by government acquisition of additional **right-of-way**, it remains conforming.

- (e) **Nonconforming signage** changed to conforming **signage**, shall never be changed back to **nonconforming signage**.
- (f) **Signage** that failed to comply with the requirements of the previous regulations in effect at the time this ordinance or its amendment became effective, and which fails to comply with the requirements of 4-8-4 through 4-8-8 above, is neither **nonconforming** nor lawful **signage**.

5-1-8 NONCOMPLYING USES:

- (a) A **noncomplying use** is a **primary use** of a **structure** (including a **building**) or **lot** which fails to meet one or more of the requirements of 4-2 and 4-6 through 4-11 above regarding minimum **vegetative cover**, parking and loading, entrances, **signs**, buffering, industrial or miscellaneous restrictions, and which otherwise lawfully existed at the time those requirements became effective.
- (b) A **noncomplying use** which is also a **nonconforming use** shall not be moved on its **lot**, **altered** or **enlarged**, except in a way that decreases the **use's** noncompliance, or in a way that prepares it for a permitted **use**.
- (c) A **noncomplying use** which is a permitted **primary use** may be **altered** or **enlarged** in any way, provided the alteration or enlargement meets all requirements of this ordinance.
- (d) When a **noncomplying use** is damaged by any means to the extent that repairs would cost more than 50% of its replacement cost, it shall only be reconstructed in compliance with the requirements of this ordinance. If it was also a **nonconforming use**, that **use** will no longer be permitted.
 - (1) When a **noncomplying use** in the FP **zone** is **substantially damaged** by any means to the extent that repairs would equal or exceed 50% of the ~~market value~~ **market value** of that **use**, the **substantially damaged noncomplying use** shall no longer be permitted in the FP **zone**.
- (e) A **noncomplying use** changed to a complying **use** shall never be changed back to a **noncomplying use**.

5-1-9 REPAIRS AND MAINTENANCE:

- (a) Discretionary repair and maintenance may be done on any **nonconforming use** or **nonconforming structure**, only if:
 - (1) the work consists of ordinary repairs, or of repair or replacement of non-bearing walls, fixtures, wiring or plumbing;
 - (2) the cost does not exceed 30% of the replacement cost of that **use** or **structure** in any 3-year period (Amend 7), or
 - (i) For properties in the FP **zone**, the cost ~~does~~ shall not exceed 10% of the ~~market value~~ **market value** of that **use**, **structure** or **mobile home** in the ~~FP **zone**~~ in any 1-year period and cumulatively along with documented damage totals from previous events ~~does~~ shall

not equal or exceed 50% of the ~~market value~~ **market value** of that **use, structure** or **mobile home** over the life of the **use, structure** or **mobile home** in the FP **zone**; and

- (3) the land area of the **use** and/or the cubic content of its **structure** are not increased beyond what they were at the time this ordinance or its amendment became effective.

- (b) **Structural alterations** shall not be made except as required by law.

5-7 CONSTRUCTION ON LAND FILL PLACED WITHIN THE *FLOODWAY FRINGE*

If a **residential** or nonresidential **building** is to be constructed on permanent land fill that raises the elevation of land out of the **floodway fringe**, the fill shall be placed in layers no greater than 1' deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method. The result of this procedure shall be certified by a ~~Registered Land Surveyor or~~ Professional Engineer at the time the land is certified as being out of the **floodway fringe**.

(Note: The correction in 5-7 was covered by Amendment 41.)

6-2 PERMITTING PROCESS

6-2-1 IMPROVEMENT LOCATION PERMITS:

- (a) It is unlawful to begin the following types of projects before an **improvement location permit** has been issued by the appropriate **Administrative Officer**:
- (1) construction of a new **primary use building, accessory building** or other **structure**;
 - (2) demolition of a **primary use building, accessory building, sign** or other **structure**;
 - (3) any **structural alteration** involved in the expansion, enlargement, conversion or repair of an existing **primary use building, accessory building** or other **structure**;
 - (4) placement, construction, erection or modification of any type of **sign** identified with a letter "P" in the table in 4-8-4 above;
 - (5) moving an existing **primary use building, accessory building, sign** or **structure** from one location to another either on the same **lot** or to another;
 - (6) construction of decks and above-ground or in-ground **swimming pools**;
 - (7) change the condition of the any land not determined to be in the FP **zone** for any **use** other than those included in SIC Groups 01 (Agricultural production -- crops), 02 (Agricultural production -- livestock), and 08 (Forestry.), unless construction plans have been approved under the *Unified Subdivision Ordinance* or drainage plans have been approved by the appropriate jurisdiction; and
 - (8) change the condition of land determined to be in the FP **zone** for any use other than SIC Groups 01 (Agricultural production -- crops) and 02 (Agricultural production -- livestock).
- (b) However, an **improvement location permit** is not required for:
- (1) a fence unless subject to UZO 2-26-4(e);
 - (2) interior or exterior maintenance that does not require **structural alteration**;
 - (3) reroofing that does not require **structural alteration**;
 - (4) landscaping, except as required by this or any other ordinance; and
 - (5) a portable or mobile storage shed up to 120 square feet in area.
- (c) A complete application for an **improvement location permit** shall include:
- (1) either the signature of the property owner or the owner's notarized consent;
 - (2) copies of a **site plan** drawn to scale, in conformance with 6-2-5 below;
 - (i)
 - (3) a filing fee, as per 6-2-6 below;
 - (4) a letter from **ABZA** that a **special exception** has been granted as per 6-4-4 below, if the **Administrative Officer** has determined that 3-2 above requires one for the proposed **use**;
 - (5) a written statement of compliance with the Industrial Performance Standards, certified by a Registered Professional Engineer, for any land **use** activity in SIC Groups 20-39 in an I1, I2 or I3 **zone**, as per 6-2-7 below; and

- (6) evidence of compliance with any other applicable regulations, ordinances or statutes.
- (d) Within 10 working days of determining that the application is complete, the **Administrative Officer** shall either:
 - (1) issue the **improvement location permit**, or
 - (2) issue a written statement as to the deficiencies of the application, which may be appealed to the **ABZA**, as per 6-4-6 below; or
 - (3) deny the **improvement location permit** and provide the petitioner a list of the application's deficiencies, which may be appealed to the **ABZA**, as per 6-4-6 below
- (e) **(LAFAYETTE)** Sixty calendar days after determining that the application for demolition of an **historic building** is complete as per 6-2-1-c above, the **Administrative Officer** shall within 10 working days:
 - (1) issue the **improvement location permit**,
 - (2) issue a written statement as to the deficiencies of the application, which may be appealed to the **ABZA**, as per 6-4-6 below; or
 - (3) deny the **improvement location permit** and provide petitioner a list of the application's deficiencies, which may be appealed to the **ABZA**, as per 6-4-6 below. (Amend 11)
- (f) It is the responsibility of the **Executive Director** to issue all **improvement location permits** for **MHP/MHCs**, regardless of jurisdiction. (Amend 11)

6-2-3 CERTIFICATES OF COMPLIANCE:

- (a) The **Administrative Officer** shall make a final inspection of the premises at which work has been authorized by an **improvement location permit** within 10 working days of being notified of the completion of that work. The **Administrative Officer** shall then issue a **certificate of compliance** if the work conforms to:
 - (1) all provisions of this ordinance, the *Unified Subdivision Ordinance*, the *Thoroughfare Plan* and any other applicable regulations, ordinances and statutes; and
 - (2) all plans submitted with the application for an **improvement location permit**.

No **use** or occupancy of the premises shall be made until this **certificate of compliance** has been issued. An **Administrative Officer** may issue a provisional **certificate of compliance** when he/she determines one to be warranted.
- (b) Except as indicated below in 6-2-3-d, any change in **use** from one permitted **primary use** to any other permitted **primary use**, as listed in 3-2 above, requires a **certificate of compliance**, whether or not an **improvement location permit** is needed.
- (c) The **Administrative Officer** shall inspect the premises at which a change of **use** only has been made within 10 working days of being notified of that change. The **Administrative Officer** shall then issue a **certificate of compliance** if the change of **use** conforms to all provisions of this ordinance. No **use** or occupancy of the premises shall be made until the **certificate of compliance** has been issued.
- (d) If no **improvement location permit** is required, a change in **use** only, within any one of the following permitted **primary uses** or from one to any

other of these **primary uses** does not require a **certificate of compliance**:

- (1) 01 Agricultural production -- crops;
- (2) 02 Agricultural production -- livestock; and
- (3) 08 Forestry, except in the FP **zone** as per UZO 2-26-18(d).

6-2-5 SITE PLAN REQUIREMENTS:

A person applying for an **improvement location permit** under 6-2-1 above, shall furnish the **Administrative Officer** with copies of a **site plan** consisting of dimensioned drawings. The **Administrative Officer** will determine the number of copies required to be submitted.

(a) COMMON ELEMENTS:

Site plan requirements vary according to the proposed **use** of the site and work to be done. Those listed in this subsection are common to all submissions, other than those falling under 6-2-5-h below. Additional requirements for specific kinds of improvements are listed in 6-2-5-b through 6-2-5-g below. The common elements, where applicable, are:

- (1) the direction north shown by an arrow;
- (2) the address of the site as assigned; if located in a **subdivision**: the **subdivision** name, section number and **lot** number; if not: the recorded legal description either attached to or incorporated within the **site plan**;
- (3) all site boundaries and dimensions;
- (4) the name, type of surface and **right-of-way** width of all on-site and adjacent **streets, alleys** and **easements**, plus private drives and interior access **roads**;
- (5) the location and horizontal and vertical dimensions of all existing and proposed **structures**, with each part appropriately labeled "existing" or "proposed";
- (6) the **use** and occupancy status of all existing and proposed **structures**, with **structures** to be removed indicated as such;
- (7) the distance of all proposed **structures** from all **front, rear and side lot lines**, measured from the point where the **structure** or its foundation is nearest the **lot line**;
- (8) the percentage of **lot coverage** by all **buildings** and the percentage of **vegetative cover**;
- (9) the location and nature of all existing and proposed utilities;
- (10) the location, elevation and condition of all on-site and related off-site drainage facilities, culverts, sewers and ditches;
- (11) the location of all existing and proposed individual sewage disposal systems on-site (showing septic tank and fingers), and within 100' of the **lot lines**;
- (12) the names and locations of all existing on-site or adjacent pipes, tiles, drains, legal ditches or streams;
- (13) the location, dimensions, rate of slope, and surface material of proposed and existing driveways and access **roads** including width at the **right-of-way** line (**lot line**); plus a detail of the driveway connection to the **street** or **alley**, showing curb radius or tapers and culvert pipe if needed;

- (14) if a **bufferyard** is required, a landscape plan indicating compliance with all requirements of 4-9 above;
- (15) if the site is located within a **PD zone**:
 - (A) proof of compliance with the adopted and recorded Final Detailed Plan; and
 - (B) proof of compliance with all applicable conditions of the PD zoning approval;
- (16) if the site lies within or adjacent to an FP **zone**:
 - (A) the **flood plain** boundary and 100-year **flood elevation** (as determined by the Indiana Department of Natural Resources, Division of Water, or by the **Executive Director** from **Flood Insurance Rate Maps** or best available written documentation on record from IDNR where available as part of the legal description, certified by a Registered Land Surveyor or Registered Professional Engineer, or alluvial soils ~~shown on the US Department of Agriculture, Soil Conservation Service maps~~ as verified by a Soil Scientist and mapped and certified by a Registered Land Surveyor;
 - (B) the **flood protection grade** and the area from the FP **zone** boundary where the **lowest floor elevation** of all **structures** must comply; and
 - (C) the ~~lowest floor elevation~~ **lowest floor elevation** of all proposed **structures**; and
 - (D) the 25' setback from **watercourses** for **primary use** and **accessory buildings** as required by UZO Section 4-4-3(b).
- (17) any other materials that the **Administrative Officer** requires to ensure compliance with any other applicable regulations, ordinances or statutes.

APPENDIX H: FLOOD PLAIN CERTIFICATION STATEMENTS

To establish that land is at or above the ***regulatory flood*** elevation:

I, *insert name*, a registered Land Surveyor in the State of Indiana, do hereby certify that the above described real estate does lie at or above the regulatory flood elevation (100 year frequency) of *insert elevation and datum* (e.g. NGVD datum) as stipulated by *insert APC or IDNR letter information* (e.g. the Indiana Department of Natural Resources for the Wea Creek in a letter dated August 21, 2001 in Wea Township, Tippecanoe County, Indiana).

Given under my hand and seal on *insert date*.

Seal & Signature Required.

To establish that land is below the ***regulatory flood*** elevation:

I, *insert name*, a registered Land Surveyor in the State of Indiana, do hereby certify that the above described real estate does lie below the regulatory flood elevation (100 year frequency) of *insert elevation and datum* (e.g. NGVD datum) as stipulated by *insert APC or IDNR letter information* (e.g. the Indiana Department of Natural Resources for the Wea Creek in a letter dated August 21, 2001 in Wea Township, Tippecanoe County, Indiana).

Given under my hand and seal on *insert date*.

Seal and Signature Required.